

ASSEMBLY BILL

No. 2840

Introduced by Assembly Member Benoit

February 24, 2006

An act to amend Section 1763 of the Insurance Code, relating to insurance brokers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2840, as introduced, Benoit. Surplus line brokers.

Existing law prohibits a person within this state from transacting insurance with a nonadmitted insurer, except through a surplus line broker, as specified. Existing law provides that it shall be conclusively presumed that insurance is placed in violation of these provisions if the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or lowest premium that could be obtained from an admitted insurer, except as otherwise provided.

This bill would instead require the insurance to be knowingly placed with a nonadmitted insurer for this presumption to operate.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1763 of the Insurance Code is amended
- 2 to read:
- 3 1763. (a) A surplus line broker may solicit and place
- 4 insurance, other than as excepted in Section 1761, with
- 5 nonadmitted insurers only if that insurance can not be procured
- 6 from insurers admitted for the particular class or classes of

1 insurance and that actually write the particular type of insurance
2 in this state. Each surplus line broker shall be responsible to
3 ensure that a diligent search is made among insurers that are
4 admitted to transact and are actually writing the particular type of
5 insurance in this state before procuring the insurance from a
6 nonadmitted insurer. Each surplus line broker shall file with the
7 commissioner or his or her designee, within 60 days of placing
8 any insurance with a nonadmitted insurer, a written report, that
9 shall be kept confidential, regarding the insurance. This report
10 shall include the name and address of the insured, the identity of
11 the insurer or insurers, a description of the subject and location of
12 the risk, the amount of premium charged for the insurance, a
13 copy of the declarations page of the policy or a copy of the
14 surplus line broker's certificate or binder evidencing the
15 placement of insurance, and other pertinent information that the
16 commissioner may reasonably require. In addition, each surplus
17 line broker shall file a standardized form to be prescribed by the
18 commissioner setting forth the diligent efforts to place the
19 coverage with admitted insurers and the results of these efforts.
20 The form shall be signed by a person licensed under this code
21 who has made the diligent search required by this section or who
22 supervised an unlicensed person or persons who actually
23 conducted the search. The insurance shall not be placed with a
24 nonadmitted insurer for the purpose of procuring a rate lower
25 than the lowest rate that will be accepted by any admitted insurer
26 except as provided by subdivision (c). The commissioner may
27 make and publish reasonable rules and regulations, consistent
28 with this chapter, in respect to transactions governed thereby and
29 the basis or bases for his or her determinations hereunder.

30 (b) It shall be prima facie evidence that a diligent search
31 among admitted insurers has been made if the standardized form,
32 filed as required by subdivision (a), establishes that three
33 admitted insurers that actually write the particular type of
34 insurance in this state have declined the risk; or that fewer than
35 three admitted insurers actually write the particular type of
36 insurance. The commissioner, or his or her designee, may review
37 the form for the accuracy of the information provided on it,
38 including, but not limited to, whether the listed insurers actually
39 write that type of insurance; and whether the three insurers
40 declined the risk. The commissioner may take disciplinary action

1 against the person signing the form for any misrepresentation
2 made in the form due to the negligence of or the result of an
3 intentional act by that person or the person or persons who
4 actually conducted the search. Those actions may include any
5 action authorized to be taken against a licensed person by this
6 code. Nothing in this subdivision shall preclude the
7 commissioner or his or her designee from directing the surplus
8 line broker to conduct a further or additional search among
9 admitted insurers for similar placements in the future.

10 (c) It shall be conclusively presumed that insurance is placed
11 in violation of this section if the insurance is ~~actually~~ *knowingly*
12 placed with a nonadmitted insurer at a lower rate of premium or
13 lower premium than the lowest rate of premium or the lowest
14 premium that could be obtained from an admitted insurer unless,
15 at the time the insurance attaches, there is filed with the
16 commissioner a statement describing the insurance, specifying
17 the rate and the nearest procurable rates from admitted insurers.
18 The statement shall include an explanation of the reasons that the
19 insurance must be placed with a nonadmitted insurer even though
20 it is available from an admitted insurer. Unless the commissioner,
21 or his or her designee, within five days after that filing notifies
22 the filing broker that in his or her opinion the placing of the
23 insurance constitutes a violation of this section, the broker may
24 thereafter maintain in effect that insurance. If within that five-day
25 period the commissioner notifies the surplus line broker that the
26 insurance is in violation of this section and orders the broker to
27 effect termination of that insurance within 10 days from the
28 notice, and the broker fails or refuses to effect that termination,
29 that failure or refusal is a violation of this section.

30 (d) Statements filed under this section are not subject to public
31 inspection unless the commissioner determines that the public
32 interest or the welfare of the filing broker requires that any
33 statement be made public.

34 (e) For purposes of this section, “type of insurance” means the
35 hazard or combination of hazards covered by a contract of
36 insurance.

37 (f) Notwithstanding subdivision (a), this section shall not
38 apply to insurance issued or delivered in this state by a
39 nonadmitted Mexican insurer by and through a surplus line
40 broker affording coverage exclusively in the Republic of Mexico

- 1 on property located temporarily or permanently in, or operations
- 2 conducted temporarily or permanently within, the Republic of
- 3 Mexico.

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